Supreme Court, U.S.
FILED
FEB 8 1993
OFFICE OF THE CLERK

92-1327

No. _____

IN THE

Supreme Court of the United States

October Term, 1992

SCOTT MANATT JR.

Petitioner,

v.

STATE OF ARKANSAS,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE ARKANSAS SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

SCOTT MANATT
Bar No. 70044
Post Office Box 473
Corning, Arkansas 72422
(501) 857-3163
Attorney for Petitioner

TREVATHAN PRESS • LITTLE ROCK

COPY

QUESTIONS FOR REVIEW

1. The Arkansas Supreme Court erred in failing to enjoin the use of the Juvenile Code as failing in equal protection of the laws of the 14th Amendment to the U. S. Constitution and also failed to accord to persons under the age of 18 years privileges or immunities which upon the same terms shall belong to all citizens under Article 2, Section 18 of the Arkansas Constitution, which created a further liberty interest, jurisdictionally treating citizens 18 to 21 differently than those 16 to 18 for the same offense.

2. The Arkansas Supreme Court erred in failing to treat the overbroad definition of "juvenile delinquent" as void for vagueness by failing to find A.C.A. §9-27-303(11) as void for vagueness and being overbroad, which definition creates as a delinquent every child in Arkansas at some time before his 18th birthday as a juvenile.

3. The Arkansas Supreme Court erred in allowing the immediate imposition of sentence or disposition of the trial court without regard to the petitioner's right to appeal and by letter ruling disallows any stay against imposition of sentence pending appeal as to juveniles in violation of the Due Process Clause of the 14th Amendment.

4. The Arkansas court erred in allowing the juvenile intake officer as its appointee and adviser to make an ex parte recommendation to the court by written recommendation prior to an adjudication of guilt during the time that the court was sitting as a trier of fact and injecting the court into the role of an advocate in violation of the Due Process Clause of the 14th Amendment.

5. The Arkansas court erred in finding a link between the possession of alcohol and the driver of a vehicle and in allowing alleged statements by the petitioner without benefit of *Miranda* warnings by an officer stopping a juvenile when the questions and answers of the targeted juvenile result in arrest and completing a "link."

PARTIES TO THE PROCEEDINGS

The petitioner, Scott Manatt Jr., is a citizen and registered voter in Clay County, Arkansas and is represented by Scott Manatt Sr.

The State of Arkansas as such is represented by the Attorney General of Arkansas.

TABLE OF CONTENTS

Page

Questions Presented i
Parties to the Proceedings ii
Table of Authorities Cited iv
Opinions Below 1
Jurisdiction 2
Statutory and Constitutional Provisions 2
Statement of the Case 5
Reasons for Granting the Writ 9
Appendix
Order of the Arkansas Supreme Court A-1
Disposition Order of Trial Court 4-9-92 ..... A-12
Disposition Order of Trial Court 1-7-92 ..... A-13
Letter Ruling of Trial Court 12-23-91 ..... A-14
Letter Ruling of Trial Court 12-18-91 ..... A-17
Arkansas Code Annotated §9-27-308 ..... A-21

TABLE OF AUTHORITIES CITED

Constitutional Provisions

Constitution of the State of Arkansas
Article 2, Section 18 ..... *passim*

Constitution of the United States
Amendment 14, Section 1 ..... *passim*

U.S.C.A. Const. Amends. 5, 14 23

Statutory Provisions

Arkansas Code Annotated §3-3-201(a)1 11
Arkansas Code Annotated §3-3-203(a)(1) 23
Arkansas Code Annotated §5-4-401(b)4 9
Arkansas Code Annotated §5-4-201 9
Arkansas Code Annotated §5-4-401 9
Arkansas Code Annotated §5-65-116 ..... *passim*
Arkansas Code Annotated §9-27-301 ..... *passim*
Arkansas Code Annotated §9-27-303 ..... 3, 13, 21, 30
Arkansas Code Annotated §9-27-308 25
Arkansas Code Annotated §9-27-321 ..... 4, 26, 30
Arkansas Code Annotated §9-27-330 ..... *passim*
Arkansas Code Annotated §27-16-914 ..... 4, 22, 30
Arkansas Code Annotated §27-16-915 ..... 4, 22, 23

Cases

United States, Petitioner v. R.L.C., 112 S.Ct. 1329 (1992) 10

Raley v. Ohio, 360 U.S. 423, 3 L.Ed.2d 1344, 79 S.Ct. 1257 (1959) 14

Robinson v. Beaumont, 291 Ark. 477, 725 S.W.2d 839 (1987) 28

Smith v. Goguen, 415 S.Ct. 566, 39 L.Ed.2d 605, 94 S.Ct. 1242 (1974) 14

Colautti v. Franklin, 439 U.S. 379, 58 L.Ed.2d 596, 99 S.Ct. 675 (1979) 15
State v. Cannon, 383 So.2d 389, *cert. denied*, 454 U.S. 1052, 70 L.Ed.2d 587, 102 S.Ct. 596 (1980) 15, 19
Scull v. Virginia, 359 U.S. 344, 3 L.Ed.2d 865, 79 S.Ct. 838 (1959) 16, 19
State v. Rhodes, 92 Wash.2d 755, 600 P.2d 1264 (1979) 16
United States v. Ecker, 543 F.2d 178 16
Walters v. City of St. Louis, 347 U.S. 231 16
Skinner v. Oklahoma, 316 U.S. 535 16
Harper v. Virginia State Bd. of Elections, 383 U.S. 663, 16 L.Ed.2d 169, 86 S.Ct. 1079 (1966) 17
San Antonio Independent School Dist. v. Rodriguez, 411 U.S. 1, 36 L.Ed.2d 16, 93 S.Ct. 1278, *rehearing denied*, 411 U.S. 959, 36 L.Ed.2d 418, 93 S.Ct. 1919 (1973) 14, 17
Squire v. Pace, 516 F.2d 240, *cert. denied*, 423 U.S. 840, 46 L.Ed.2d 58, 96 S.Ct. 68 (4th Cir., 1975) 18
McGalliard v. State, 813 S.W.2d 768 18
Musser v. Utah, 333 U.S. 95, 92 L.Ed.2d 562, 68 S.Ct. 397 (1948) 18
In Re Griffiths, 413 U.S. 717, 37 L.Ed.2d 910, 93 S.Ct. 2851 (1973) 19
Gorman v. University of Rhode Island, 646 F.Supp. 799, 35 Ed. Law Rep. 1073 23
Kastl v. State, 796 S.W.2d 848 ..... 27, 28

IN THE

Supreme Court of the United States

October Term, 1992

SCOTT MANATT JR.

Petitioner,

v.

STATE OF ARKANSAS,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE ARKANSAS SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

TO THE HONORABLE THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

OPINIONS BELOW

The November 9, 1992 opinion of the Supreme Court of Arkansas is reported at ___ S.W.2d ___ and at Appendix A-1 of this petition. The opinion of the Circuit-Chancery-Juvenile Court of the Western District of Clay County is not reported but is set forth as Appendix A-12. The letter opinion of the Honorable Ralph Wilson, Circuit-Chancery-Juvenile Court judge, is not reported but is at Appendix A-14. The letter opinion of Judge Wilson is not reported but is at Appendix A-17.

JURISDICTION

The Court has jurisdiction and jurisdiction exists under Rule 10.1(c) in that the Supreme Court of Arkansas, in a final decision, has decided a federal question in a way that conflicts with applicable decisions of the Supreme Court of the United States.

STATUTORY AND CONSTITUTIONAL PROVISIONS

Amendment 14 to the United States Constitution, Section 1: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws."

Article 2, Section 18 of the Constitution of the State of Arkansas: "The General Assembly shall not grant to any citizen or class of citizens privileges or immunities which upon the same terms shall not equally belong to all citizens."

Arkansas Code Annotated §9-27-330: If a juvenile is found to be delinquent the court may enter an order making any of the following dispositions:

(1) Transfer legal custody of the juvenile to the Department of Human Services, or to other licensed agency responsible for the case of juveniles, or to a relative or other individual;

(2) Order the juvenile or members of the juvenile's

family to submit to physical, psychiatric or physiological evaluations;

(3) Commit the juvenile to a youth services center operated by the Youth Services Board, using the Risk Assessment System for Arkansas Juvenile Offenders developed by the 1990 Youth Services Center Commitment Criteria Review Committee to be distributed and administered by the Administrative Office of the Courts;

(a) In an order to commit, the court may recommend that a juvenile be placed in a community-based program instead of a youth services center, and shall make specific findings in support of such a placement in the order;

(b) Upon receiving an order of commitment with recommendations for placement in a community-based program, the Youth Services Board shall consider the recommendations of the committing court in making its placement to a youth services center to a community-based alternative;

(4) Place the juvenile on probation under those conditions and limitations that the court may prescribe pursuant to §9-27-339(a);

(5) Assess a court cost of no more than thirty-five dollars ($35.00) to be paid by the juvenile or his parent, guardian or custodian;

(6) Order restitution to be paid by the juvenile or his parent, guardian or custodian;

(7) Order a fine of not more than five hundred dollars ($500) to be paid by the juvenile or his parent, guardian or custodian;

(8) Order that the juvenile participate in court-approved public service not to exceed one hundred sixty (160) hours.

Arkansas Code Annotated §9-27-303: "A delinquent juvenile" means any juvenile ten (10) years or older

who has committed an act other than a traffic offense or game and fish violation which, if such act had been committed by an adult, would subject said adult to prosecution for a felony, misdemeanor or violation under the applicable criminal laws of this state.

Arkansas Code Annotated §5-65-116: (a) Whenever a person who is less than eighteen (18) years of age pleads guilty or nolo contendere to, or is found guilty of, driving while intoxicated under 5-65-101 *et seq.*, or of any criminal offense involving the illegal possession or use of alcohol or controlled substances, or is found by a juvenile court to have committed such an offense, the court shall prepare and transmit to the Department of Finance and Administration within twenty-four (24) hours after the plea or finding an order of denial of driving privileges for the minor. . . .

A.C.A. §27-16-915(a)(1); Whenever a person pleads guilty, nolo contendere, or is found guilty of any criminal offense involving the illegal possession or use of controlled substances under §§5-64-101 *et seq.*, the court shall prepare and transmit to the Department of Finance and Administration, within twenty-four (24) hours after the plea or finding, an order to suspend the driving privileges of the person for six (6) months.

Arkansas Code Annotated §27-16-914: Upon receipt of an order of denial of driving privileges under §5-65-116 or 5-64-710, the Department of Finance and Administration shall suspend the motor vehicle operator's license of the minor for twelve (12) months or until the minor reaches eighteen (18) years of age, whichever is longer.

Arkansas Code Annotated §9-27-321: Statements

made by a juvenile to the intake officer or probation officer during the intake process prior to a hearing on the merits of the petition filed against the juvenile shall not be used or be admissible against the juvenile at any stage of any proceedings in juvenile court or in any other court.

STATEMENT OF THE CASE

The questions for review in this case are the rulings of the Arkansas Supreme Court in applying the overbroad definition of juvenile delinquent, the more harsh treatment received by juveniles than adults, the failure to stay juvenile matters pending appeal, a juvenile's rights to *Miranda* warnings and the juvenile court's appointees assisting the prosecution, in violation of the Equal Protection of the Law Clause and Due Process Clause of the 14th Amendment. The issues were raised by motion on December 2, 1991 in the trial court, a letter ruling obtained thereon and an appeal to the Arkansas Supreme Court taken challenging the Juvenile Code as unconstitutional under the 14th Amendment by being vague and overbroad and subjecting the juvenile to the enforcement of the Juvenile Code based on the personal predilections of the individual officers.

Further, the petitioner raised the question of an increased liberty interest as a fundamental right under Article 2, Section 18 of the Arkansas Constitution which should bar the disparate and unequal treatment of juveniles. The petitioner alleges that the greater penalties that could or would be placed on a juvenile than an adult for the exact violation of law are a violation of the Equal Protection of the Laws clause of the 14th Amendment. Specifically, the petitioner raised the question that while an adult may be subject to a fine of only $100 for a Class C misdemeanor in Arkansas, a juvenile would be subject

to a fine of five times that amount of up to $500, a removal from the home for up to two years or 18th birthday, a court cost, up to 160 hours of public service and such other provisions as were set up under the Arkansas Juvenile Code for which an adult could not be sentenced.

Petitioner raised the question that under the Juvenile Code overbroad definition of "juvenile delinquent" that based only upon the personal predilections of the intake officers and officers of the law, every child in Arkansas, under the definition as written, could or would be a juvenile delinquent before his 18th birthday. These same points were assigned as errors to the Arkansas Supreme Court in Points One through Five inclusive and are addressed and set forth at Appendix A-1 by the Arkansas court, same being the decision of the Arkansas Supreme Court. All points are properly raised, preserved and before the court.

In addition, the issue raised at both the trial court as per the letter ruling Appendix A-14 and A-17 and at the Supreme Court and as addressed by the Arkansas Supreme Court claim that due process is denied a juvenile under the Arkansas Code if he cannot stay the enforcement of the juvenile court order pending an appeal to a higher court. This denies the juvenile the equal protection of the law and the due process guarantee of the 14th Amendment.

All issues were raised by motion on December 2, 1991 with memorandum brief attached and were preserved and appealed directly to the Supreme Court of Arkansas, from which ruling this petition is taken. On September 1, 1991, Scott Manatt Jr., a 16-year-old, along with three other unidentified and uncharged teenagers, was stopped on a state highway in Arkansas with no driv-

ing violation given by an officer of the state police.[1] The trooper looked into the back end of a pickup truck, out of reach of all occupants, and saw an unopened container of beer and charged the driver only with minor in possession of alcohol and elicited a statement from the minor without the benefit of *Miranda* rulings. The case was processed through the juvenile court, and the juvenile court determined, under the definition of "juvenile delinquent," that the juvenile was a juvenile delinquent for being in possession of alcohol, and the trooper admitted and the court found that the juvenile was not and had not been drinking and was not intoxicated. Petitioner, by motion, sought to have the Juvenile Code definition declared unconstitutional as vague and overbroad under the 14th Amendment and the disparate treatment of juveniles declared unconstitutional under the liberty interest and Equal Protection of the Laws Clause of the 14th Amendment as further granted under Article 2, Section 18 of the Arkansas Constitution. The petitioner sought to have the court-appointed personnel disqualified to participate in the prosecution and assisting the prosecution or in making recommendations to the same court which appointed them and at whose pleasure they served and which approved their salaries. The issue of the appearance of an absence of fundamental fairness was an issue when the employees of the juvenile office were appointed and serving at the pleasure of the trial court and making recommendations to the same judge who employed them while sitting as the "trier of fact" prior to an adjudication of guilt. The petitioner raised the questions of overbreadth of the Juvenile Code as being void for vagueness. The petitioner also raised the issue of whether or not the

---

[1] The court corrected its own error by noting that no speeding or other violation citation had been given. (TR. 87).

enforcement of a juvenile court order could or should be stayed pending appeal which was denied by letter ruling, Appendix A-14, and affirmed by the Supreme Court of Arkansas, Appendix A-1. The question of unequal treatment of juveniles treated more harshly under the Juvenile Code than an adult for the self same violation of an act was raised as an unconstitutional dichotomy and disparate treatment under the Equal Protection of the Laws Clause.

Petitioner maintains that the definition of "juvenile delinquent" under Arkansas law is so overbroad as to subject every juvenile in the state of Arkansas to being declared a "juvenile delinquent" based on the personal, subjective dictates and predilections of the individual officer involved and does not give any clear definitive standard of when a juvenile will be declared a "juvenile delinquent" and is therefore void for both vagueness and being overbroad in violation of the 14th Amendment.

REASONS FOR GRANTING THE WRIT

1. The Arkansas Supreme Court erred in failing to enjoin the use of the Juvenile Code as failing in equal protection of the laws of the 14th Amendment to the U. S. Constitution and also failed to accord to persons under the age of 18 years privileges or immunities which upon the same terms shall belong to all citizens under Article 2, Section 18 of the Arkansas Constitution, which created a further liberty interest, jurisdictionally treating citizens 18 to 21 differently than those 16 to 18 for the same offense.

Petitioner would respectfully state to the Court that under the below-cited authorities, Arkansas treats its juveniles as to misdemeanors and unclassified violations particularly more harshly than an adult would be treated for the exact same conduct and creates an illegal and unconstitutional class prohibited under both the 14th Amendment of the federal Constitution and denies the juvenile the "liberty interest" created under Article 2, Section 18 of the Arkansas Constitution.

Under A.C.A. §5-4-201, the maximum fine which may be imposed for a Class C misdemeanor is $100 if the conviction is of a Class C misdemeanor by an adult.

Under A.C.A. §5-4-401, the maximum sentence for an adult committing an unclassified misdemeanor shall be in accordance with the specific limitation of the statute defining the unclassified misdemeanor. *(See,* A.C.A. §5-4-401[b]4.) The maximum sentences for a person over age 18 are: For a Class C misdemeanor, incarceration not exceeding 30 days, for a Class B misdemeanor, incarceration not exceeding 90 days and for a Class A misdemeanor incarceration not exceeding one year. It is worthy to

note that generally a period of probation or imposition of sentence may not exceed the maximum period of incarceration provided under the statute but which could up to two years in the case of a juvenile, which juvenile could be placed in a detention facility for two years or until the age of 18 years for any violation of any statute, regardless of it severity. *(See,* A.C.A. §9-27-330[3].) The juvenile should not be required to shed his constitutional protections at the courthouse doors by reason of age and condition, but under the Arkansas Juvenile Code, it certainly appears that, under the guise of rehabilitation of the juvenile, a lot of punishment is being inflicted.

Petitioner respectfully submits that under A.C.A. §9-27-330, a "delinquent juvenile" for an unclassified misdemeanor could be fined not more than $500, no matter what the statutorily prescribed maximum penalty for an adult or a person over age 18 and, in addition, the juvenile may be sentenced to public service not to exceed 160 hours, for which there is no equivalent penalty for any adult violating the exact same law. The juvenile, in addition, could be placed on probation and/or removed from the home and/or sent to the training school for any amount of time until his 18th birthday under the provisions of §9-27-330, all of which exceed the maximum punishments for the same conduct if convicted as an adult of the same Class C misdemeanor or unclassified misdemeanor. An adult would simply forfeit the bond, pay the fine, take the lesser punishment and go his way. Unfortunately, the juvenile has simply started day one in the maze of an unconstitutional system. Justice Souter, writing for the majority of the United States Supreme Court, addressed this issue in *United States, Petitioner v. R. L. C.*, 112 S.Ct. 1329 (1992), in affirming the Eighth Circuit.

The plaintiff respectfully submits to this Court that

as to the minor in possession of (unopened) beer, same has nothing whatsoever to do with any driving violation. It has nothing whatsoever to do with a driver's license. It acts as nothing more than a whipping boy or a punishment where any offense, no matter how poorly defined, creates a delinquency within the meaning of the Arkansas Code. There is no rational basis, no distinction and clearly no reason to separate persons 18 to 21 and give them a greater or different classification than those persons under the age of 18 for a violation of the exact same act. A.C.A. §3-3-201(a)1 reads:

> It shall be unlawful for any person under the age of twenty-one (21) years to purchase or have in possession any intoxicating liquor, wine, or beer.

Yet, the penalties are different.

In the case of *United States, Petitioner v. R. L. C., supra,* Justice Souter on March 24, 1992 writing for the Court stated, "The provisions of the Juvenile Delinquency Act require the length of official detention in certain circumstances to be limited to the maximum term of imprisonment that would be authorized if the juvenile had been tried and convicted as an adult." By dicta, clearly, the Court intends that a juvenile not be treated more harshly than an adult for the same offense. To reach this issue for clarification, certiorari needs to be granted.

The Court very clearly held, "No ambiguity about the statute's intended scope survives the foregoing analysis, but if any did, the construction yielding the shorter sentence would be chosen under 'the rule of lenity.' " The Court also ruled that the Eighth U. S. Circuit Court of Appeals read this language to bar a juvenile term longer

than the sentence a court could have imposed on a similarly situated adult after applying the United States sentencing guidelines. In short, this decision stands for the proposition that if you can't do it to an adult, it can't be done to a child, and no greater sentence can be given to a child or a juvenile than would be allowed under the same criminal code if applied to an adult. 60 Law Week 4235. Again, by dicta, this would apply to all phases of sentencing, incarceration, fines, probation and/or public service or displacement from the home. The Supreme Court has capped the penalty to be paid by juveniles as such and voids A.C.A. §9-27-330 to the extent that any sentence which could or would exceed an adult sentence for the same offense is not constitutionally permissible.

The Arkansas court attempted to avoid this result by holding that the juvenile was not sentenced under the juvenile code. This would appear to defy logic and the ruling of letters opinion Appendix A-14 and A-17. The court attempted to circumvent this effect by raising the question of the juvenile standing. Standing is not an issue in that the juvenile was (1) brought before the juvenile court, (2) found delinquent under the Arkansas code's overbroad definition, (3) obtained the juvenile officer recommendations, (4) sentenced by the juvenile court under A.C.A. §9-27-330 and (5) "paid" assessed cost under the Juvenile Code at $35. In addition, the juvenile, for a nonpossession, minor in possession of beer in the back end of a truck with four occupants, was the only juvenile charged, the only juvenile convicted or labeled under the Arkansas juvenile code as a "juvenile delinquent." The other juveniles were not identified, charged or questioned and did not appear. This appears to be selective prosecution.

The Arkansas court erred in its determination

(inconsistently within its own order set forth at page 2) which reads, "the case was processed in the juvenile division, the chancellor found that appellant was a 'delinquent juvenile and then the court ruled that the petitioner was not sentenced under the Juvenile Code. The court simply determined that the circuit court found him guilty of a charge when the only charge was "juvenile delinquency" for violating a statute of Arkansas. This petitioner was determined and labeled for disposition as a juvenile delinquent and under a vague statute we can put a library sign on a mess hall, but it's still the kitchen. We can call it a disposition, but it's still a conviction and sentence.

2. The Arkansas Supreme Court erred in failing to treat the overbroad definition of "juvenile delinquent" as void for vagueness by failing to find A.C.A. §9-27-303(11) void for vagueness and being overbroad, which definition creates as a delinquent every child in Arkansas at some time before his 18th birthday as a juvenile.

Under the definition of juvenile delinquent in A.C.A. §9-27-303, the court may commit a juvenile for conduct which may vary from court to court, and a juvenile may be committed to a period of detention in a juvenile facility for very minor offenses and without warning and which propensity to violate together with the opportunity to violate requires "strict scrutiny" in that a "liberty interest is being taken." That to declare every law, ordinance and statute on the books of the state of Arkansas, every city or county ordinance of every city and county within the state of Arkansas and every regulation within the state of Arkansas as an offense inclusive in the definition of a delinquent juvenile is over-broad and is vague to such extent that same is void for vagueness under the 14th

Amendment to the Constitution of the United States. It creates the appearance that the only standard in the application of such an overbroad definition is that there are no standards. The treatment is purely and totally subject to the suggestive dictates only of the officer, intake officer, probation officer, officer of the law, sheriff or state police on the scene. The statute fails to give a definitive and clear warning as to what constitutes delinquency within the fundamental fairness doctrine and within the doctrine of due process and fair play. The statute fails to identify a standard of conduct for which activities are prescribed and further fails to provide a standard for police enforcement and for ascertainment of guilt. Under the Equal Protection Clause, if a classification "impinges upon a fundamental right explicitly or implicitly protected by the Constitution, . . . strict judicial scrutiny" is required, regardless of whether the infringement was intentional. *San Antonio Independent School Dist. v. Rodriguez*, 411 U.S. 1, 93 S.Ct. 1278, 36 L.Ed.2d 16 (1973). Likewise, the Court has ruled that a state may not issue commands to its citizens under criminal sanctions in language so vague and undefined as to afford no fair warning of what conduct might transgress them. *Raley v. Ohio*, 360 U.S. 423, 3 L.Ed.2d 1344, 79 S.Ct. 1257 (1959).

The Arkansas court erred in applying the standard for delinquency from the Arkansas Code definition of "juvenile delinquent" to a specific conduct statute which was alleged inclusive in the definition. Arkansas includes in one breath and one sentence the entire Criminal Code of Arkansas and every violation on the law books of the state of Arkansas as against a juvenile.

In *Smith v. Goguen*, 415 U.S. 566, 39 L.Ed.2d 605, 94 S.Ct. 1242 (1974), the Supreme Court clearly established that selective law enforcement may not be tolerat-

ed and ruled that the 14th Amendment's due process doctrine concerning vagueness of statutes incorporates notions of fair notice or warning and requires legislatures to set reasonably clear guidelines for law enforcement officials and triers of fact in order to prevent arbitrary and discriminatory enforcement. There is denial of due process where inherently vague statutory language permits selective law enforcement. In 1979, the Court went further in holding that "as a matter of due process, criminal statute which fails to give person of ordinary intelligence fair notice that his contemplated conduct is forbidden by statute, or which is so indefinite that it encourages arbitrary and erratic arrests and convictions is void for vagueness, such being especially true where uncertainty induced by statute threatens to inhibit exercise of constitutionally protected rights." *Colautti v. Franklin*, 439 U.S. 379, 58 L.Ed.2d 596, 99 S.Ct. 675 (1979).

The Arkansas court erred in attempting to place the duty on petitioner to submit empirical data to sustain the argument of the juvenile that under the overbroad definition of juvenile delinquent every child in Arkansas would stand to be a juvenile delinquent before his 18th birthday. In short, on a full application of the Juvenile Code, 100 percent of the children of a state would be juvenile delinquents before majority. Only selective enforcement can avoid that result under the definition of delinquent. In short, the petitioner becomes charged with the duty to prove the impossible, a negative.

To meet due process requirements, language of statute must give adequate warning of conduct proscribed and must also provide standards to enable judges and juries to fairly administer law. *State v. Cannon*, 383 So.2d 389, *cert. denied* 454 U.S. 1052, 70 L.Ed.2d 587, 102 S.Ct. 596 (1980).

Fundamental fairness requires that a person cannot be sent to jail for a crime he could not with reasonable certainty know he was committing; reasonable certainty in that respect is all the more essential when vagueness might induce individuals to forgo their right of speech, press and association for fear of violating an unclear law. *Scull v. Virginia*, 359 U.S. 344, 3 L.Ed.2d 865, 79 S.Ct. 838 (1959).

Although most vagueness challenges are directed at statutes which prohibit particular conduct without defining that conduct, a defendant's constitutionally protected "liberty interest" created by juvenile disposition standards is also subject to void for vagueness test. *State v. Rhodes*, 92 Wash.2d 755, 600 P.2d 1264 (1979).

There is no drug offense in this case, but the penalty for an adult committing an unrelated drug offense is loss of driving privileges for six months, but for a person under 18, the penalty is loss of driver's license for the longer of one year or until the 18th birthday. An unlicensed minor can in theory lose a right to a driver's license while walking in no way associated with a motor vehicle. This dichotomy is unconstitutional. The equal protection clause does not require that all persons be dealt with identically, it only requires that classifications rest on real and not on feigned differences, that the distinctions have some relevance to the purpose for which the classification is made and that the different treatment is not so disparate as to be arbitrary. *United States v. Ecker*, 543 F.2d 178; *Walters v. City of St. Louis*, 347 U.S. 231; *Skinner v. Oklahoma*, 316 U.S. 535.

Where fundamental rights and liberties are asserted under equal protection clause, classifications which

might invade or restrain them must be closely scrutinized and carefully confined. *Harper v. Virginia State Bd. of Elections*, 383 U.S. 663, 16 L.Ed.2d 169, 86 S.Ct. 1079 (1966).

In determining whether a particular state law impinges on fundamental right or interest so as to subject to strict judicial scrutiny under the equal protection clause, the Supreme Court does not pick out particular human activities, characterize them as "fundamental" and give them added protection but, to the contrary, the Court simply recognizes, as it must, established constitutional right and gives to that right no less protection than the Constitution itself demands. *San Antonio Independent School Dist. v. Rodriguez, supra.*

In addition, petitioner respectfully submits that the tie goes to the runner and, in this case, one has an act of the Arkansas legislature in 1991 which excludes the question of age and excludes the question of minor in possession as to the privilege of license and driving. It seems that the purpose of the Juvenile Code was to provide for rehabilitation of the juvenile, but it quite obviously appears that the actual treatment is punitive. To this end, the Supreme Court in addressing a Virginia disorderly conduct statute for vagueness denied certiorari in a ruling that held:

> State disorderly conduct statute is unconstitutionally vague and overbroad in violation of First and 14th Amendments where statute (1) does not inform defendant as to what conduct is proscribed; (2) allows policemen, prosecutors and courts to impose their personal predilections as to proper behavior; and (3) could inhibit exercise of First Amendment rights because it has been

> construed to embrace speech, unaccompanied by acts, which need not do more than outrage public decency.

Squire v. Pace, 516 F.2d 240, *cert. denied* 423 U.S. 840, 46 L.Ed.2d 58, 96 S.Ct. 68 (4th Cir., 1975).

In *McGalliard v. State*, 813 S.W.2d 768, the Arkansas court stated:

> A law is void for vagueness if it lacks ascertainable standards of guilt such that persons of common intelligence must necessarily guess at its meaning and differ as to its application.

It seems clear that under the Arkansas preferred ruling that no two people in Arkansas can determine what application will be made as to a particular juvenile in a particular county before a particular judge as to a disposition. Obviously, no two will be treated alike, and therefore all must guess at the meaning and certainly differ as to the application of the Arkansas Juvenile Code.

The Supreme Court has further ruled:

> Statutes defining crimes run afoul of due process clause if they fail to give adequate guidance to those who would be law abiding, to advise defendants of nature of offense with which they are charged, or to guide courts in trying those who are accused.

Musser v. Utah, 333 U.S. 95, 92 L.Ed.2d 562, 68 S.Ct. 397 (1948)

> To meet due process requirements, language of statute must give adequate warn-

> ing of conduct proscribed and must also provide standards to enable judges and juries to fairly administer law.

State v. Cannon, 383 So.2d 389, *cert. denied* 454 U.S. 1052, 70 L.Ed.2d 587, 102 S.Ct. 596 (1980)

> Fundamental fairness requires that person cannot be sent to jail for crime he could not with reasonable certainty know he was committing; reasonable certainty in that respect is all more essential when vagueness might induce individuals to forgo their right of speech, press and association for fear of violating unclear law.

Scull v. Virginia, 359 U.S. 344, 3 L.Ed.2d 865, 79 S.Ct. 838 (1959)

> Under equal protection clause, state which adopts suspect classification bears heavy burden of justifying classification by showing that its purpose or interest is both constitutionally permissible and substantial and that its use of classification is necessary to accomplishment of its purpose or safeguarding of its interest.

In Re Griffiths, 413 U.S. 717, 37 L.Ed.2d 910, 93 S.Ct. 2851 (1973)

The petitioner has previously filed for a writ of prohibition to the Arkansas Supreme Court, which writ was denied, from the ruling of the lower trial court, petitioner having filed a direct challenge to the constitutionality of A.C.A. §9-27-301, known as the Juvenile Code, alleging that the Arkansas Juvenile Code is violative of the equal protection of the laws clause of the 14th Amendment to the United States Constitution and also that the same was violative of a "liberty interest" granted and pro-

tected as a fundamental right of Article 2, Section 18 of the Constitution of the State of Arkansas and also asked that A.C.A. §9-27-301 be declared unconstitutional as being void for vagueness. The petitioner prayed that the court enjoin the use of the juvenile code both temporarily and permanently, raising the dichotomy of treatment of children 17 years of age and those 18, 19 and 20 years of age, same being treated differently under the selfsame statute of Arkansas. This was brought about by reason of a charge brought in the juvenile court charging the appellant with minor in possession of alcohol (not drinking, not DWI, not drug related) when said alcohol was in unopened containers in the open bed of a pickup truck with the above minor driving and with three other persons whose ages and identities were not revealed, who were not charged or interviewed by the prosecution and who did not testify.

Appellant respectfully submits that it is very, very clear that the code provides that a person under the age of 21 who is in possession of alcohol without regard of whether it's in a vehicle or otherwise is a minor in possession and subject to penalty. However, the code provides that a child 17 years of age will be treated by a loss of a driver's license, whereas a person 18 years of age will not be so treated. A child 17 years 364 days old would lose his driver's license for one year under the statute, which provides for the loss of license for the greater of a year or until his 18th birthday, while a person one day older would not lose his license for as much as a day in spite of the exact same charge. This dichotomy of law is unconstitutional and void on its face. It is a denial of the equal protection of the laws. It is a failure to treat persons equally under the laws. In addition, the overbroad, overreaching definition of a juvenile delinquent within the state of Arkansas includes every fact, thing and circum-

stance under the codes of the state, including throwing paper on the sidewalk, vocalizing an expletive or curse word, getting into a harmless shoving encounter at school, with or without fault, or taking a piece of bubble gum —that child is subject to being declared a juvenile delinquent if it occurs at any time before his 18th birthday. There is no standard other than every child who does anything, no matter how harmless, and without regard to its severity, with no allowance for a defense in that the only issue for adjudication is not the offense which occurred but whether the child is a juvenile, and the adjudication is one of "delinquency," not minor in possession or littering or disorderly conduct or misbehaving. The standard of guilt is one of strict liability (if it were a civil matter) and negates the presumption of innocence until proven guilty beyond a reasonable doubt.

The Arkansas court erred in failing to treat the overbroad definition of juvenile delinquent as void for vagueness by failing to find A.C.A. §9-27-303(11) void for vagueness being overbroad, which statute creates as a delinquent every child in Arkansas at some time before his 18th birthday and applied an autonomous criminal statute in substitution for the complained-of statute.

3. The Arkansas Supreme Court erred in allowing the immediate imposition of sentence or disposition of the trial court without regard to the petititioner's right to appeal and by letter ruling disallows any stay against immposition of sentence ending appeal as to juveniles in violation of the Due Process Clause of the 14th Amendment.

Arkansas Code Annotated §5-65-116 provides:

(a) Whenever a person who is less than

> eighteen (18) years of age pleads guilty or nolo contendere to, or is found guilty of, driving while intoxicated under §§5-65-101 et seq., or of any criminal offense involving the illegal possession or use of alcohol or controlled substances, or is found by a juvenile court to have committed such an offense, the court shall prepare and transmit to the Department of Finance and Administration within twenty-four (24) hours after the plea or finding an order of denial of driving privileges for the minor. . . .

The above being further identified as Act No. 93 of 1989 and A.C.A. §27-16-915 below and is also known as Act 1109 of Acts of the General Assembly of 1991, which reads as follows:

> (a)(1) Whenever a person pleads guilty, nolo contendere, or is found guilty of any criminal offense involving the illegal possession or use of controlled substances under §§5-64-101 et seq., the court shall prepare and transmit to the Department of Finance and Administration, within twenty-four (24) hours after the plea or finding, an order to suspend the driving privileges of the person for six (6) months.

A.C.A. §27-16-914 reads:

> Upon receipt of an order of denial of driving privileges under §5-65-116 or §5-64-710, the Department of Finance and Administration shall suspend the motor vehicle operator's license of the minor for twelve (12) months or until the minor reaches eighteen (18) years of age, whichever is

longer.

It is noted that A.C.A. §27-16-915, the 1991 act, has no reference to possession or use of alcohol as a reason for loss of license to drive and a total absence of age differential. Petitioner respectfully submits that by implication §27-16-915 or Act 1109 of 1991 has created an illegal, wrongful and unconstitutional dichotomy in providing classes of citizens and created a greater penalty for persons under the age of 18 than for persons 18 or older and also included for persons under 18 an additional element of culpable criminal conduct without regard to the fact that persons 18 to 21 years of age in possession of alcohol are committing the same violation within this state, the legal age for drinking in Arkansas being 21. The due process clause applies to any deprivation of "liberty" or "property" interests that are more than *de minimis.* U.S.C.A. Const. Amends. 5, 14. *Gorman v. University of Rhode Island,* 646 F.Supp. 799, 35 Ed. Law Rep. 1073.

The petitioner respectfully submits that this is a flagrant denial of the equal protection of the laws clause of the 14th Amendment and under Article 2, Section 18 of the Arkansas Constitution which expanded the "liberty interest" as a fundamental right creates a class of citizens especially as to those of ages 18 to 21 which get a greater privilege by age than the minors under age 18 for a violation of the same statute, A.C.A. §3-3-203(a)(1).

Petitioner respectfully states that the Arkansas court is acting beyond its jurisdiction in denying the petitioner a stay pending an opportunity to appeal. Further, the court exceeded its jurisdiction in proceeding under the code definition of a juvenile delinquent, same being totally defective as being unconstitutionally vague by being overbroad, which act in and of itself with a simple

reading absolutely creates a standard whereby every child within the state of Arkansas will be deemed or can be deemed a juvenile delinquent before the age of 18 years unless that child should happen to live an absolutely perfect life.

Petitioner respectfully submits that the Arkansas court rulings revoke the driver's license of a 17½-year-old minor and to have that revocation in place and running during any period of appellate review on the merits or otherwise. Even if the petitioner wins an appeal, the penalty gets paid; this is wrong. Petitioner respectfully submits to this honorable Court that petitioner has no other adequate remedy available. In this case, there is no suggestion of a drinking violation of any kind, and the record will reflect that the officer so testified, which fact is undisputed by reason of the unopened containers in the back end of a truck occupied by four persons with the only charged or identified person therein being this petitioner.

The Arkansas court ruled inconsistently in holding, "We do not reach the first subpart of this argument because an adult cannot be convicted of the offense of possession of intoxicating liquor by a minor." Yet an adult under Arkansas and federal law is a person 18 years of age. Yet the criminal statute for minor in possession provides a penalty for persons under the age of 21. The court just ignores the force of the law as to those people between 18 and 21 and who would be violating the same act but with no similar penalty.

Petitioner submits to this honorable Court that while the Court has occasionally ruled that juvenile matters are rehabilitative in nature and not punitive, nonetheless, the question of delinquency creates a standard of

conduct whereby all the safeguards of due process and equal protection of the laws clause must be in place. The Court has determined that disparate and arbitrary treatment is outside the scope of due process. Petitioner respectfully submits to this honorable Court that a casual reading of the statute of the disposition alternatives as to a juvenile under A.C.A. §9-27-330 provides for a fine of up to $500, however a Class C misdemeanor in the criminal courts under the criminal code limits a fine for said conduct as not exceeding $100. Therefore, a juvenile may be fined more as a juvenile than an adult for exactly the same thing. This is one of the most clear and obvious distinctions to be raised under the dichotomy of laws or sublayer of law prohibited by Article 2, Section 18 of the Arkansas Constitution which granted a further liberty interest to a minor in addition to the federal liberty interest and has enlarged a fundamental right in Arkansas.

Petitioner respectfully submits to this honorable Court that a petition was filed challenging the right of the juvenile officer and/or the intake officer to sit at the counsel table with the prosecution when they and each of them had been appointed to their jobs by the juvenile court judge presiding under the provisions of A.C.A. §9-27-308 and worked at the direction and discretion of the court. These same juvenile officers then made an "*ex parte* recommendation" to the court by way of a docket sheet recommending with the recommended disposition of a loss of a driver's license for one year and a $35 fine and placed before the court prior to the trial and/or a determination of delinquency while the court was sitting in its capacity as non-jury trier of fact and not as the court. This conduct gives the clear impression that the recommendation was prior to a determination of guilt and if a jury matter would be grounds for a mistrial if submitted to the trier of fact. The docket sheet certainly gives an

appearance of less than impartiality of the court. Petitioner suggests that the court should have no communication with either the juvenile officers or the prosecution by docket sheet, recommendations or direct contact at any time prior to the actual trial in any case in which the court will sit as the trier of fact, or in the capacity of the jury.

That the juvenile code further provides that the juvenile officer and the intake officer may not testify in the proceedings (A.C.A. §9-27-321), yet the same officers (appointees of the trial court) sat at the table with the prosecution during the course of the trial and gave the appearance of assisting the prosecution while they were serving at the pleasure of the court and subject to removal by the court. The same parties who cannot testify fill out the charge sheets, cause summons to issue and act in every way as an assistant to the law enforcement agency or the prosecution, in spite of the prohibition of testimony being given. It certainly appears that this type activity is beyond the jurisdiction of the court and the court invades the province of the legislature by letting the officers so conduct themselves and also undermines the court by having the court's appointees sit with and assist the prosecution.

This certainly gives the appearance and feeling by the petitioner of intimidation when the court enters into the adversarial system of justice and as a matter of law has tainted all the proceedings herein.

That the court injected itself into the proceedings at the start of the proceedings by obtaining "evidence" from the defendant in violation of the Fifth Amendment to the U. S. Constitution by completing the element of age as to a status misdemeanor by the following questions to the attorney and defendant *pro se.*

THE COURT: How old is your son?
MR. MANATT: Your Honor, he just turned 17.
THE COURT: 17? What is the date of his birth?
MR. MANATT: September 3, 1974.
THE COURT: Okay, my math wasn't that quick.

These things, taken together with the *ex parte* communications by the intake officer, all while the court sits as a trier of fact, creates an atmosphere where the court does not give the appearance of impartial trier of fact but rather has taken the role of an advocate for the prosecution to the detriment of the juvenile. And in the capacity of an advocate, the court sustained after eliciting the testimony of possession of beer the "link" set forth as the standard of *Kastl v. State*, 796 S.W.2d 848. This is a denial of due process and overreaching by the trial court sitting as the trier of fact and tends to give the appearance of undermining and discrediting impartiality of the court. The prosecution never in the record established the age of the petitioner. The prosecution never elicited a direct statement as to anything the petitioner was supposed to have said. These two items only come about by the court overreaching.

5. The Arkansas court erred in finding a link between the possession of alcohol and the driver of a vehicle and in allowing statements by the petitioner without benefit of *Miranda* warnings by an officer stopping a juvenile when the questions and answers of the targeted juvenile result in arrest and completing a "link."

The petitioner respectfully states that the Arkansas trial court wrongfully denied all of the questions of the constitutionality and the request for an injunction was denied and proceeded to trial after having made a further

judicial determination that *Miranda* warnings were not given the petitioner and were unnecessary and ordered an immediate taking of the petitioner's driving license for a period of one year at the disposition hearing of the above-named juvenile. The trial court had stated in its letter opinion of December 23, 1991 "that there will be no stay on this disposition to allow an appeal," and the court further stated that "only a writ of prohibition would stop the trial court from proceeding in this fashion." The Supreme Court erred in summarily dismissing this point. A clear reading of Act 1109 of 1991 would be that it has created an unconstitutional dichotomy of law in treating kids 17 years of age different than those 18 years of age as to minor in possession of alcohol on non-driving violations under the statute which operative words are "under the age of 21 years" as opposed to age 18 or 17 or 19 years.

"No, sir, it was not in the reach of any of the people from where they were sitting—it was in the back of an open-end pickup."

In addition, the standards as set forth in *Kastl v. State*, 796 S.W.2d 848, have been ignored and stretched by a "link" of self incrimination by a minor without an attorney and without the benefit of *Miranda.* That the court took the role of an advocate over objection made at first occurrence, in passing, was any one of the four persons 21 years of age? Three were not in court, and the record is silent on identity, age or location of the other occupants. Must the petitioner prove anything? The court must be impartial. With no speeding citation given, the question of a random stop is raised when the officer never testified except he was a little fast. Is this 57 in 55—no speed was given. A citizen has a right ot be left alone and not to be arrested without probable cause. *Robinson v. Beaumont,*

291 Ark. 477, 725 S.W.2d 839 (1987), under Article 2, Section 8 of the Arkansas Constitution and the 14th Amendment of the federal Constitution. The juvenile certianly should have equal or greater rights than an adult. There is no standard requiring understanding by a juvenile. In short, the system survives by reason of the juvenile not being aware of his right and having no requirement that a juvenile have a clear understanding. As children, they feel compelled to answer an officer of the law as they are raised, not realizing that the officer will then arrest or charge them. The procedural safeguards of the 14th Amendment (due process) require more.

CONCLUSION

Wherefore, the petitioner respectfully prays that this Court review the statutes and the constitutional provisions herein set forth, this brief, the Arkansas court ruling and treatment of juveniles and rulings of the trial court and determine for itself as to the constitutionality of the Arkansas Juvenile Code. That the Court should void the code for being overbroad and vague and an unconstitutional dichotomy of law created, and as to whether or not on its face the definition of "juvenile delinquent" is overbroad and therefore unconstitutional. Further, the Court should determine that a failure to afford to the juvenile the equal protection of the Equal Protection of the Laws Clause of the 14th Amendment by a failure to Mirandize a juvenile is defective as to any statement made by the child. Petitioner respectfully submits that there is no adequate remedy at law, that the lower court took the driver's license (whether a privilege or not) in a mobile society in 1991 same is a necessity and the privilege or necessity is being taken outside the scope of the equal protection of the laws and/or due process clause and without a right to stay pending appeal.

Petitioner respectfully asks that this Court grant certiorari and that the Court declare said statutes void by reason of the unequal treatment of the juvenile offender and adult offenders as defined by the General Assembly for the same conduct; enjoining the use of the Juvenile Code A.C.A. §9-27-303(11) and §§9-27-301 *et seq.* and the definition of delinquent juvenile and/or disposition alternative and further enjoining the state from the enforcement of the taking of a license to drive based upon an adjudication of delinquency under the related statutes, A.C.A. §§5-65-116, 27-16-914 and 3-3-203 *et seq.* and for all other relief to which petitioner may be entitled and that the Court should further direct that A.C.A. §9-27-321 be construed to absolutely limit the participation of juvenile officers when acting as employees and assistants to the court sitting as a jury, reverse as error any conduct of the trial at any time the court sits as a trier of fact based upon the *ex parte* communication and court involvement in the case.

In conclusion, the Juvenile Code is unconstitutional, overbroad and violation of the 14th Amendment.

Finally, certiorari should be granted for the *ex parte* recommendation to the trier of fact, the trier of fact asking questions and ruling on their own admissibility and the trier of fact taking the role of an advocate beyond the role of the impartial, circuit, chancery, juvenile, probate court. To this, we must add, and "non-jury trier of fact." With this much power and control in one place, then the court must be more detached than ever to avoid both overreaching and appearing less than impartial and taking on the role as an advocate and prosecutor. It goes without saying that the autonomy and integrity of the court should never be questioned, and we who would advocate

must preserve against the appearance of favoritism, overreaching and unfairness.

Accordingly, and for all the right reasons, the Juvenile Code and the system must fail and be recreated and corrected by the Arkansas legislature, which has both the authority and responsibility to submit only constitutional acts to the people clear enough to comprehend easily, fair enough to be uniformly enforced and within the confines of the constitutions, both state and federal, to ensure justice fairly, equally and with due regard for fundamental rights and preservation of all liberty interest.

Respectfully submitted,
SCOTT MANATT
Bar No. 70044
Post Office Box 473
Corning, Arkansas 72422
(501) 857-3163
Attorney for Petitioner

APPENDIX

OPINION OF SUPREME COURT OF ARKANSAS

SUPREME COURT OF ARKANSAS

No. 92-566

Scott Manatt Jr.,

Appellant,

v.

State of Arkansas,

Appellee

Opinion Delivered November 9, 1992

Appeal from the Clay County Chancery Court

No. J-91-28

Hon. Ralph Wilson, *Judge*

Affirmed

ROBERT H. DUDLEY, *Associate Justice:*

Shortly after midnight on September 1, 1991, State Trooper Steve Shults was driving his police car on Highway 67 near the Missouri state line when he saw a pickup truck exceeding the speed limit while traveling south toward Corning. The trooper followed the truck, as it continued to exceed the highway speed limit, into a 45 m.p.h. zone in Corning, where he saw it veer across a yellow line. The trooper thought the driver of the truck might be intoxicated and stopped the truck at 12:26 a.m. The trooper got out of his car and, as he was approaching the pickup, he glanced into the bed of the truck and saw a case of beer in cans, six bottles of beer, and four wine coolers. The trooper asked the driver for his license, looked at it, and saw that the driver, appellant Scott Manatt Jr., was only sixteen years old. There were three other teenagers in the truck. The trooper asked to whom the beer and wine belonged, and appellant responded

that it was his. The trooper satisfied himself that appellant had not been drinking and shortly afterwards issued a citation to appellant as being a minor in possession of intoxicants, and let him go. The case was processed in the juvenile division of chancery court. The chancellor found that appellant was a delinquent juvenile because he had violated the statute prohibiting minors from possessing intoxicants. He entered an order denying the appellant's driving privileges for one year, but allowed him to drive to and from work and school. Court costs amounted to $35.00. Appellant makes five assignments of error, and those assignments, in turn, contain many subpoints. Some of the subpoints are not easily followed, but we are satified that there is no merit in any of them and, accordingly, affirm.

Appellant's first point is:

> Under Rule 29(1)(A), it is alleged that the lower court erred in failing to enjoin the use of the Juvenile Code as failing in equal protection of the laws of the 14th Amendment to the U. S. Constitution and also failed to accord to persons under the age of 18 years privileges or immunities which upon the same terms shall belong to all citizens under Article 2, Section 18 of the Arkansas Constitution, jurisdictionally treating citizens 18 to 21 differently than those 16 to 18 for the same offense.

In this point appellant contends that the juvenile code is unconstitutional and that we should enjoin its use because, when a juvenile violates a criminal statute, he is subjected to more severe penalties than would be an adult for violating the same statute. We do not reach the merits of the argument because appellant was not sentenced under the juvenile code. Appellant was given a citation for being a minor in possession of intoxicating liquor. *See* Ark. Code Ann. §3-3-203 (1987). The chancellor found that he violated the statute and consequently found him to be a delinquent juvenile, *see* Ark. Code Ann. §9-27-303(11) (Repl. 1991). Without objection, the chancellor applied Ark. Code Ann. §5-64-710 (1987), a part of the criminal code, and suspended his driving privileges. The criminal code provides that the trial court *shall* deny driving privileges when a person who is less than eighteen years old is found guilty of a criminal offense involving the illegal possession of alcohol. This penalty, denial of a driver's license, "shall be in addition to all other penalties." Ark. Code Ann. §5-64-710 (Supp. 1991).

The salient fact is that there was no "disposition," such as commitment to a youth services center, probation, or fine, as provided for in Ark. Code Ann. §9-27-330 (1987), the statute that appellant contends unconstitutionally provides excessive punishment for juveniles. Instead, the only "disposition" was to deny appellant the privilege of holding a driver's license as provided for in the criminal statute and driver's license statute, and, by statute, that is to be "in addition to all other penalties."

In order to have standing to challenge the constitutionality of a statute, a party must demonstrate that the challenged statute had a prejudicial impact on him. *Montgomery v. State*, 277 Ark. 95, 640 S.W.2d 108 (1982). Here, the challenged statute had no impact on appellant, and, therefore, he has no standing to challenge it. In his reply brief the appellant contends that he has standing because court costs were assessed against him under the juvenile code, but he has not shown that court costs are discriminately applied in juvenile court. Accordingly, we affirm the trial court's refusal to enjoin the use of the juvenile code.

Appellant's second assertion of error is:

> The lower court erred in failing to treat the overbroad definition of "juvenile delinquent' as void for vagueness by failing to find A.C.A. §9-27-303 sub paragraph 11 as void for vagueness and being overbroad which definition creates as a delinquent every child in Arkansas at some time before its 18th birthday as a juvenile.

The primary contention under this point is that the definition of "delinquent juvenile" contained in Ark. Code Ann. §9-27-303(11) (1987) is facially void for vagueness. Appellant does not contend that the statute he was found to have violated, "minor in possession of intoxicants," is void for vagueness. Rather he argues that the definition of "delinquent juvenile" is void. Since there was no disposition of appellant under this definition, we do not need

to reach the issue, but we discuss it in a summary manner only as a prelude to another of his subpoints.

The statute defines the term "delinquent juvenile" as any juvenile ten years old or older who has committed an offense that would constitute a felony, misdemeanor, or violation for an adult, excepting traffic offenses and game and fish violations. The statute sets out the age of a juvenile offender, and it defines the type of behavior that will cause one to be classified as a delinquent juvenile. Under the definition, a juvenile would only have to look to the criminal code and city ordinances to find the proscribed acts. Thus, the statute is not facially void. *See State v. Torres*, 306 Ark. 554, 816 S.W.2d 169 (1991), for a complete discussion of the standard for determining whether a statute is void for vagueness.

Appellant alternatively argues that if the definition is not vague, and if it is literally followed, it is overbroad because it subjects every juvenile to being declared a delinquent. Appellant did not offer any empirical data to sustain this argument. The only data on the subject of which we are aware, and of which we can take judicial notice, are the statistical publications of the Administrative Office of the Courts and the United States Census, and this data does not sustain appellant's contention. Thus, the chancellor did not err in refusing to declare the juvenile code unconstitutional because the definition of "delinquent juveniles" is overbroad.

Also under the same point of appeal appellant

contends that the statute he was convicted of violating, being a minor and possessing alcohol, is in violation of the Equal Protection Clause. Citing our legal drinking age of twenty-one, appellant contends that all persons who are under the age of twenty-one, and who possess alcohol must be treated the same, but, under our statute, only persons less than eighteen years old lose their driver's license when they possess intoxicants. Such an argument loses sight of the fact that a person reaches majority in this state at the age of eighteen years, Ark. Code Ann. §9-25-101 (1987), and it is only minors who are subject to losing their driving privileges under this act. It is adults over the age of eighteen, but under the age of twenty-one, who cannot purchase intoxicants, who might make a hollow equal protection argument. In addition, in *Carney v. State*, 305 Ark. 431, 808 S.W.2d 755 (1991), we set out the basis for this dichotomy, and we hold that it is rational and, consequently, not unconstitutional. We need not repeat that reasoning here.

Appellant's third point of appeal is:

> The court erred in exercising jurisdiction beyond its jurisdiction by enforcing Act 93 of 1989 A.C.A. §5-65-116 without regard to Act 1109 of Acts of the legislature of 1991 A.C.A. §27-16-915 and failing to find that the 1989 act was amended by the 1991 act and by immediate imposition of the ruling of the court without regard to the defendant's right to appeal and by letter ruling disallows any stay against disposition pending appeal.

Appellant contends that Ark. Code Ann. §5-65-116 (Supp. 1991), the part of the criminal code passed in 1989 that provides for the suspension of driver's licenses of juveniles under eighteen who commit offenses involving intoxicants, was repealed by implication by Ark. Code Ann. §27-16-916 (Supp. 1991), a part of the code dealing with driver's licenses that was passed in 1991.

The two statutes are not in conflict, and one does not repeal the other by implication. The criminal code section 5-65-116 provides that a person under eighteen who is convicted of driving while intoxicated, or who illegally possesses alcohol or a controlled substance, shall lose his driver's license. On the other hand, the driver's license statute, section 27-16-915, provides that any person, regardless of age, who illegally uses or possesses controlled drugs, as they are defined by the Controlled Substances Act, shall lose his driver's license. Thus, there was no repeal of that part of the criminal code providing for the loss of a driver's license by a person under eighteen years of age when he is found guilty of an offense involving intoxicants. In addition, this court has stated that repeal by implication is favored. *Johnson v. Sunray Serv., Inc.*, 306 Ark. 497, 816 S.W.2d 582 (1991).

Under this same assignment of error appellant makes an additional equal protection argument. He contends that there is an unconstitutional disparity in the way section 5-65-116 treats juveniles under eighteen as compared to the way it treats adults, and also in the way it

treats juveniles under eighteen compared to the way it teats [sic] people eighteen, nineteen, or twenty years of age. We do not reach the first subpart of this argument because an adult cannot be convicted of the offense of possession of intoxicating liquor by a minor. *See* Ark. Code Ann. §3-3-203 (1987). With regard to the second subpart of the argument, a person reaches majority in this state at the age of eighteen, Ark. Code Ann. §9-25-101 (1987), and there is a rational basis for taking the privilege of driving from a minor who possesses intoxicants. *Carney v. State*, 305 Ark. 431, 808 S.W.2d 755 (1991). Under a different statute, a person must be twenty-one years of age before he can lawfully possess intoxicants. Ark. Code Ann. §3-3-203 (1987). As we have already set out in the second assignment of error, there is a rational basis for treating minors under the age of eighteen differently from adults who have not yet reached the lawful drinking age of twenty-one.

Appellant makes yet another subargument under this assignment of error, "[T]he lower Arkansas trial court is acting beyond its jurisdiction in denying the appellant an opportunity to appeal. . . . " We summarily dismiss this argument as we are now hearing this case on appeal.

Appellant's fourth assignment of error is:

> The court erred in allowing the juvenile intake officer as its appointee and advisor to make an *ex parte* recommendation to the court by written recommendation

> prior to an adjudication of guilt during the time that the court was sitting as a trier of fact and injecting the court into the rule of an advocate.

Appellant's first argument under this assignment of error is that the trial court violated Ark. Code Ann. §9-27-321 (Repl. 1991), which provides that a statement made by the juvenile to the intake officer shall not be admissible in evidence against the juvenile. There simply was no statement to an intake officer that was admitted into evidence. An incriminating statement made to the trooper was admitted into evidence, but that is not prohibited by the cited statute.

Additionally under this assignment, appellant argues that the trial court abused its discretion in allowing the intake officer to sit at counsel table with the deputy prosecutor during this proceeding, and that the trial court erred in allowing the intake officer to make the recommendation that the appellant's driver's license should be suspended for one year. Again, we treat the matter summarily because, even if appellant's arguments were valid, there was no possible prejudice. There is no doubt appellant was a minor and that he was in possession of intoxicants, and the applicable statute provides that in such case the trial court is *required* to suspend the minor's driver's license. *See* Ark. Code Ann. §5-65-116 (Supp. 1991).

Appellant next argues that this case should be reversed because the chancellor took an adversary pos-

ture at trial. The argument is based upon the following. At the beginning of the case the chancellor asked appellant's attorney: "How old is your son?" and, during the trooper's testimony, appellant made an objection, based on the lack of a *Miranda* warning. The trial court then asked five pertinent questions of the trooper before ruling. One of these questions was: "How did he claim ownership?" Appellant cites no authority that these questions by the court were improper in a juvenile hearing, and we know of none. When a party cites neither cases nor authority for an argument, nor gives a convincing argument, and the argument has no readily apparent validity, we will not further consider the matter. *Brown v. Minor*, 305 Ark. 556, 810 S.W.2d 334 (1991).

In his final assignment of error, appellant contends:

> The court erred in finding a link between the possession of alcohol, and the driver of a vehicle, and in allowing alleged statements by the defendant without benefit of statements by the defendant without benefit of *Miranda* warnings by an officer stopping a juvenile when the questions and answers of the targeted juvenile resulted in arrest and completing a "link."

Appellant makes a number of arguments under this assignment of error, but all but one of them are based upon the contention that the trial court erred in allowing the trooper to testify that appellant admitted that the intoxi-

cants were his because the officer did not give a *Miranda* warning to appellant. The ruling was correct. Here, the officer issued a citation in lieu of an arrest. *See* A.R.Cr.P. Rules 5.1 and 5.2. The officer did not take appellant into custody. In *Berkemer v. McCarthy*, 468 U.S. 420 (1984), the United States Supreme Court held that persons temporarily detained pursuant to a routine traffic stop are not "in custody" for the purposes of *Miranda*. The Court reasoned that *Miranda* warnings were not required in such cases because the stop was temporary, it was in public, and the atmosphere on a public street is not comparable to the "police dominated" custodial interrogation. The Court held that a motorist who is detained pursuant to a traffic stop is entitled to a recitation of his rights only when the stop becomes such that he is "subjected to treatment that renders him 'in custody' for practical purposes." *Id.* at 440.

Finally, in two separate subarguments, appellant contends that this case should be reversed because trial court did not act in an impartial manner and that there was a "predisposition " to "make an example out of this defendant." The record does not show that the trial court acted unfairly or impartially in any manner, or sought to make an example of appellant. We consider the argument to be disrespectful of the trial court and in violation of Rule 6 of the Rules of the Supreme Court and Court of Appeals, but, rather than take punitive action, we state that the argument is completely without a basis and inappropriate.

Affirmed.

Newbern, J., not participating.

IN THE CHANCERY COURT
OF CLAY COUNTY, ARKANSAS
JUVENILE DIVISION

Disposition Order
Delinquency

STATE OF ARKANSAS *Plaintiff*
vs. No. WJ-91-28
Scott Manatt Jr., Juvenile
Scott and Sharon Manatt,
Parent, Guardian or Custodian *Defendants*
DOB 9/3/74
Sex M
Race C

The court has jurisdiction of the subject matter and parties pursuant to Ark. Code Ann. 9-27-306(a)(1).

The juvenile was adjudicated delinquent on January 7, 1992.

Pursuant Ark. Code Ann. 9-27-330 and -331, the court orders:

. . . .

Court costs of $35.00 (not to exceed $35) to be paid by juvenile or parent, guardian or custodian.

. . . .

Additional orders: To revoke his driving privileges until January 6, 1993.

Additional findings: Juvenile was represented in court by Scott Manatt Sr.

. . . .

It is so ordered this 9th day of April, 1992.

RALPH WILSON
Judge

IN THE CHANCERY COURT
OF CLAY COUNTY, ARKANSAS
JUVENILE DIVISION
Adjudication Order
Delinquency

STATE OF ARKANSAS *Plaintiff*
vs. No. WJ-91-28
Scott Manatt Jr., Juvenile
Scott and Sharon Manatt,
Parent, Guardian or Custodian *Defendants*
DOB 9/3/74
Sex M
Race C

Pursuant to Ark. Code Ann. 9-27-306(a)(1), the court has jurisdiction of the subject matter and the parties.

After a hearing pursuant to Ark. Code Ann. 9-27-327, the court finds beyond a reasonable doubt that the juvenile did commit the following act(s) alleged in the petition: On 9/01/91, Scott Manatt Jr. was stopped by Arkansas State Police on Hwy. 67, Corning, AR, while driving his truck with three other passengers. Found in his truck was 1 case of beer (24), 4 bottles of wine coolers and 6 bottles

of beer. The court finds that the acts, if committed by an adult would constitute a felony, misdemeanor or other violation under the criminal laws of this state, as follows: Offense—Minor in Possession of Alcohol. Ark. Code Ann. 3-3-203

The juvenile is ten (10) years old or older.

. . . .

Upon such findings, the court enters judgment that the juvenile is delinquent as defined by Ark. Code Ann. 9-27-303(11).

It is ordered this 7th day of January, 1992.

RALPH WILSON
Judge

Letter Opinion of Judge Ralph Wilson Jr.
To Scott Manatt and Joe Calvin
Dated December 23, 1991

After rendering my decision in a letter opinion dated December 18, 1991, I received in the mail a cover letter dated December 19, 1991 from Mr. Manatt along with his enclosed motion to modify the record and motion for a new trial, both of which were filed on December 19, 1991.

In regard to the motion to modify the record, Ark. Code Ann. §9-27-343 (1987) governs appeals from juvenile court to the Arkansas Supreme Court or Arkansas Court of Appeals, which shall be in the same time and manner provided for appeals from chancery court. Fur-

thermore, Ark. Code Ann. §9-27-309 (1987) states that all records may be closed and confidential within the discretion of the court. I am inclined to grant defendant's motion to change his name to a "John Doe" provided Mr. Manatt can cite me the specific authority for doing so.

After reviewing defendant's motion for a new trial, I am denying that motion finding it meritless. The actions taken by the juvenile intake and probation officers before and during trial are proper under the Arkansas Juvenile Code of 1989. Therefore, that motion will be denied.

In regard to Mr. Manatt's cover letter, the objection to the hearing in Piggott is well taken. Ark. Code Ann. §9-27-307 (1987) provides in pertinent part that a proceeding under the sub-chapter (Ark. Juvenile Code) shall be commenced in the court of the county in which the juvenile resides. This is a delinquency case and the delinquent act also occurred in the county of defendant's residence, the Western District of Clay County, Arkansas. Furthermore, Ark. Code Ann. §16-13-210 (1987) and §16-13-317 (1987) also state that no contested case can be tried outside the county of the venue of the case, except upon the agreement of the parties interested. Although this case was properly tried in the Western District of Clay County, the disposition hearing apparently must also be heard there unless both parties consent to another venue within the Second Judicial District.

Mr. Manatt is correct in the last paragraph of his cover letter in that I did not rule on his allegation of a

discrepancy between Act 93 of the Third Extraordinary Session of 1989 and Act 1109 of 1991. Act 93 is codified as §27-16-914 (Supp. 1991) and §5-65-116 (Supp. 1991) and §5-64-710 (Supp. 1991). This act specifically applies to persons who are less than 18 years of age who plead guilty, nolo contendere, or who are found guilty of, among other things, the illegal possession or use of alcohol or controlled substances, etc. Again, this statute specifically applies to minors—those persons under 18 years of age. However, Act 1109 of 1991, codified as §27-16-915 (Supp. 1991) is a statute which applies to controlled substances regardless of the age of the offender. That is, the statute applies whenever a person pleads guilty, nolo contendere, or is found guilty of any criminal offense involving the illegal possession or use of controlled substances, then that offender's driving privileges must be suspended for a period of six months. Again, this statute is distinguishable from Act 93 in two respects:

1) It applies merely to controlled substances.

2) It applies to "a person" and not limited to those under 18 years of age. Obviously, the defendant in this case was convicted of an offense involving the illegal possession of alcohol.

I want to make this final point clear. I will make a special trip to Corning to enter a disposition in this case as required by law. This disposition will not be affected by any appeal to an appellate court unless that court specifically issues a writ of prohibition against me from enforc-

ing that disposition. In other words, it is my position that an appeal to an appellate court of a juvenile delinquency case does not stay the disposition of that case. And because of the defendant's age in this case, his driving privileges must be suspended for a period of twelve months. The sooner that suspension begins the sooner it ends, which would appear to be in the defendant's best interest. I intend to issue a disposition of this case on or before January 17, 1992.

Letter Opinion of Judge Ralph Wilson Jr.
To Scott Manatt and Joe Calvin
Dated December 18, 1991

Upon cross-examination of Trooper Steve Shults of the Arkansas State Police, Mr. Manatt orally moved to suppress the defendant's incriminating statement regarding ownership of the beer and wine coolers in the bed of the truck because the defendant (driver of the truck) had not been given his Miranda warnings. Furthermore, Mr. Manatt, at the close of the state's case moved for a directed verdict of acquittal. Both motions were taken under advisement. At the time the defense also rested.

1. Admissibility of Defendant's Statement Issue

The state only called one witness, Trooper Steve Shults, who testified he stopped the defendant for speeding at about 12:26 a.m. on September 1, 1991, on U. S. Highway 67 north of Corning. Trooper Shults testified he noticed some beer and wine coolers in the open bed of

the defendant's pickup truck while walking to the driver's side of this vehicle. The defendant, 17 years of age, was driving his truck. There were three other occupants, one male and two females.

Trooper Shults, during his initial contact with the defendant, inquired as to the ownership of the beer and wine coolers. He testified the defendant claimed the beer and wine cooler as his (defendant's). Afterwards, the trooper issued a citation to the defendant charging him with speeding and minor in possession of alcohol. Trooper Shults also testified he did not believe the defendant or occupants had been drinking alcohol prior to this stop. The defendant was released at this point and never taken into custody. The defendant's incriminating statement was made to the trooper while the defendant was in his own vehicle.

At trial, the defendant's counsel failed to object to this incriminating statement as related by Trooper Shults. However, upon cross-examination about this issue, Mr. Manatt moved to suppress.

The issue is whether the statement by the defendant to Trooper Shults is admissible although the defendant was not "Mirandized" by the officer. I find that this statement is admissible.

First, the warnings required under *Miranda* come into play only when the defendant is subject to custodial interrogation or the functional equivalent thereof in that

he has been deprived of his freedom of action. *Beckwith v. United States*, 425 U.S. 341 (1976). Safeguards prescribed by *Miranda* become applicable as soon as a suspect's freedom of action is curtailed to a degree associated with formal arrest. No *Miranda* warnings are required if the question by officers is simply investigatory. *Gardner v. State*, 296 Ark. 41, 754 S.W.2d 518 (1988); *Bennett v. State*, 302 Ark. 179, 789 S.W.2d 436 (1990). Police inquiry is purely investigatory and proper until the suspect is restrained in some significant way. *Shelton v. State*, 287 Ark. 322, 699 S.W.2d 728 (1985).

Here, the defendant was not in custody at the time the statement was made. He was stopped for speeding, a minor moving traffic offense, asked several questions, briefly detained and given a citation for the alleged offenses. He was never formally arrested or placed in custody.

Second, only when the process becomes "accusatory" do *Miranda* rights attach. *Murry v. State*, 276 Ark. 372, 635 S.W.2d 237 (1982). Also, when officers interview a person in a non-custodial situation even though the investigation has "focused" on him, his statement may be admissible despite failure to give strict *Miranda* warnings. *Beckwith v. United States*, 425 U.S. 341 (1976). Basically, in this case, there was no interrogation of the defendant. Even though Trooper Shults said he would have given the defendant a ticket for minor in possession without the incriminating statement (as owner and driver of the vehicle), I don't find that the defendant was the "focus" of the

officer's investigation, which was a brief question as to who owned the alcoholic beverages.

Third, the defendant's counsel did not make a timely objection to the officer's recitation of the defendant's incriminating statement as to the ownership of the alcohol. A party has a duty to make a timely and complete objection to the admissibility of evidence. *Moore v. State*, 303 Ark. 514, 798 S.W.2d 87 (1990). An objection must be made at the first opportunity to do so and must apprise the trial court of the specific ground. *James v. State*, 11 Ark. App. 1, 665 S.W.2d 883 (1984); *Boone v. State*, 232 Ark. 274, 668 S.W.2d 17 (1984).

For these reasons, I am denying the defendant's motion to suppress this inculpatory admission by the defendant.

2. Motion for Directed Verdict Issue

Defendant's counsel has cited the case of *Kastl v. State*, 303 Ark. 358, 796 S.W.2d 848 (1990), in his motion for directed verdict. That case is distinguishable from this one. Here, the trooper testified that the defendant was driving the truck which contained the beer and wine coolers in the open bed of the truck. Furthermore, the defendant told the officer he owned the truck. Finally, the defendant claimed ownership of the alcohol. This is certainly constructive possession of the alcohol if not actual possession. Even assuming this was a joint occupancy or ownership situation, the defendant's statement that he

owned the alcohol is the additional link necessary between the defendant and the contraband. *Embry v. State*, 302 Ark. 608 (1990); *Osborne v. State*, 278 Ark. 45, 643 S.W.2d 251 (1982).

For these reasons, the motion for directed verdict is denied. Therefore, I find the allegation of minor in possession as contained in the state's juvenile delinquency petition has been substantiated beyond a reasonable doubt, and I hereby adjudicate the defendant to be a delinquent juvenile. Disposition will be held on Friday, January 17, 1992 in Piggott at 9:30 a.m. unless the defendant desires an earlier disposition date.

I am sending a copy of this letter opinion to the Clay County Juvenile Office for them to prepare an adjudication order for me to sign.

Arkansas Code Annotated §9-27-308

Personnel—Duties.

(a) INTAKE OFFICERS.

(1) The judge of the juvenile court shall designate no less than one (1) person in his judicial district as "intake officer" for the court.

(2)(A) An intake officer shall have the following duties:

(i) To receive and investigate complaints and charges that a juvenile is delinquent or dependent-neglected, or that a family is in need of services;

(ii) To make appropriate referrals to other

public or private agencies of the community if their assistance appears to be needed or desired;

(iii) To perform all other functions assigned to him by this subchapter, by rules promulgated pursuant thereto, or by order of the court.

(B) Any of the foregoing functions may be performed in another state if authorized by a court of this state and permitted by the laws of the other state.

(b) PROBATION OFFICERS.

(1) The judge of the juvenile court shall designate no less than one (1) person in his judicial district as "probation officer."

(2) A probation officer shall have the following duties:

(A) To make appropriate investigations and reports when required to do so by any provision of this subchapter or the rules promulgated pursuant thereto or by any order of the court;

(B) To aid and counsel juveniles and their families when required to do so by order of the court;

(C) To perform all other appropriate functions assigned to him by this subchapter or the rules promulgated pursuant thereto or by order of the juvenile court;

(D) To give appropriate aid and assistance to the court when requested to do so by the judge.